

SERVICE DATE - LATE RELEASE APRIL 19, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 643X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN LAPORTE, PORTER  
AND STARKE COUNTIES, IN

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: April 19, 2004

By decision served on February 20, 2004, the Board granted the petition of CSX Transportation, Inc. (CSXT), for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an approximately 32.97-mile line of railroad in CSXT's Western Region, Chicago Division, Wabash Subdivision, extending from milepost CF 0.63, at LaCrosse, to milepost CF 15.23, at Wellsboro, and from milepost CI 212.55, at North Judson, to milepost CI 230.92, at Malden, in LaPorte, Porter and Starke Counties, IN.

On March 1, 2004, the Incorporated Town of North Judson (the Town) filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the entire line for \$1,200,000, consisting of \$1,050,550 for track materials and \$149,450 for the land. In a decision served on March 4, 2004, the Board postponed the effective date of the February 20, 2004 decision to permit negotiations to go forward under the OFA process. Because the parties were unable to agree on the sale price, on March 31, 2004, the Town filed a request for the Board to set terms and conditions for the sale.

On April 5, 2004, CSXT replied to the request to set terms and conditions. CSXT states that the Board should set the purchase price of the line at \$2,431,288, consisting of \$1,952,288 for track materials – a substantial increase over the value assigned to those materials by CSXT in its petition for exemption (allegedly because of an increase in the price of scrap steel) – and \$479,000 for the land.

On April 8, 2004, the Town filed a motion to strike a portion of the evidence and argument in CSXT's reply. The Town objects to the new evidence of the increased value of the line, claiming that CSXT unfairly and prejudicially withheld this evidence until now. On April 13, 2004, CSXT filed a reply urging the Board to deny the motion to strike.

In setting the terms and conditions for a sale under the financial assistance procedures, the Board is required to set a price that is no lower than the constitutional minimum value, usually the net

liquidation value of the line. The evidence that has been submitted in this case appears to be flawed in that: (a) CSXT claims that the estimated net salvage value of the tracks and track materials stated in its petition is out-of-date, and (b) the updated evidence of value tendered in CSXT's reply to the Town's request to set terms is not verifiable. CSXT indicates the sources it used to determine its revised unit values and states that the values are averages of the latest quotes received from these sources. CSXT does not, however, disclose the various price quotes by specific source reference. Also, CSXT does not state whether the figures used are retail prices or wholesale values.

The Board has not yet ruled on the Town's motion to strike but, in the event that the Board finds it appropriate to consider updated information on the value of track components as part of its determination of the net liquidation value of the line's assets, the Board requires additional information. Therefore, both parties are directed to submit the following information: detailed, verifiable and reliable evidence based on valid, reliable, independent sources which sets the wholesale (salvage) unit values for the various weights and classes of rail and other track materials that comprise the subject line, including scrap value for those portions of the line that would be disposed of as scrap. The evidence must include the working papers supporting the sources of the unit values and any calculations or modifications used to determine the proposed unit values along with a detailed explanation of the rationale for the calculation or modification. Both parties must address whether the wholesale salvage values they propose include removal and transportation costs of the salvaged materials, the distance of transportation if applicable, and any other costs related to sale of the salvaged materials.

For the Board to meet the April 30, 2004 deadline for issuance of its decision on the request to set terms and conditions, the parties must submit this information no later than April 21, 2004.

It is ordered:

1. The parties are directed to submit the above-described information no later than April 21, 2004.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary